

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.08.2015

CORAM

THE HONOURABLE MR.JUSTICE R.SUDHAKAR

Civil Miscellaneous Appeal No.743 of 2015

Venkatesan

... Claimant/Appellant

vs.

1. Mani
2. The Oriental Insurance Co. Ltd.,
No.5, Krishnan Street,
Thiruvannamalai. ... Respondents/Respondents

Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988 against the award and decree dated 25.05.2005 passed in M.C.O.P.No.168 of 2004 on the file of the Motor Accidents Claims Tribunal (Chief Judicial Magistrate), Thiruvannamalai.

For appellant : Mrs.M.Malar

For respondent 2 : Mr.J.Chandran

J U D G M E N T

The claimant is the appellant in the above appeal challenging the award and decree dated 25.05.2005 passed in M.C.O.P.No.168 of 2004 on the file of the Motor Accidents Claims Tribunal (Chief Judicial Magistrate), Thiruvannamalai.

2. Heard Mrs.M.Malar, learned counsel appearing for the appellant and Mr.J.Chandran, learned counsel appearing for respondent No. 2.

3. It is a case of fatal accident. The brief facts of the case are as follows:- The accident in this case happened on 24.5.1999 at 1.30 a.m. When the deceased was walking nearing her house after attending nature's call, a lorry proceeding towards Thirukovilur from Thiruvannamalai came in a rash and negligent

manner and hit against the deceased. As a result of the accident, the deceased died on the spot. His son has filed a claim for compensation in a sum of Rs.2,00,000/-. According to the claimant, the deceased was working as an assistant to mason and was earning a sum of Rs.100/- per day.

4. The said Original Petition was contested by the second respondent herein contending that the deceased was never at the accident spot and she had no business to be at the accident place at the alleged time and place of occurrence. It was also contended that the FIR was completely silent about the vehicle details and driver particulars. Hence, it was bald and concocted cock and bull story. Hence, the second respondent is not liable to pay the compensation.

5. Before the Tribunal, Mr.Venkatesan, the claimant, was examined as P.W.1 and one Murugan, eye witness was examined as P.W.2. Exs.P-1 to P-5 were marked. On the side of the respondents, no document was filed and no witness was examined.

6. Considering the oral and documentary evidence, the Tribunal granted a sum of Rs.83,304/- as compensation with 9% interest.

7. Aggrieved by the said order of compensation, the claimant has filed the present appeal for enhancement of compensation awarded by the Tribunal. The Tribunal, after hearing the submissions made on both sides and after analysing the documents filed in support of the claim, fixed the monthly income of the deceased at Rs.800/-. After deducting 1/3rd towards personal expenses, the Tribunal adopted multiplier 13 as per the Section 163AA of the Motor Vehicles Act and awarded a sum of Rs.83,304/- towards compensation (534 x 12 x 13).

8. The Tribunal, taking note of the fact that the driver of the offending lorry admitted the accident and paid penalty, awarded the above-said compensation. However, the Tribunal has not awarded any amount towards loss of love and affection and funeral expenses. Since the driver of the lorry had admitted the offence, which is supported by the document Ex.P.5, the award amount has to be enhanced.

9. Accordingly, the award of the Tribunal is modified as follows:-

Sl. No.	Head	Amount granted by the Tribunal	Amount granted by this Court
1	Loss of income	Rs.83,304/-	Rs.83,304/-
2	Loss of Love and affection and funeral expenses	--	Rs.16,696/-
	Total	Rs.83,304/-	Rs.1,00,000/-

10. There is no dispute in respect of the interest granted by the Tribunal at 9% per annum. Accordingly, the same is confirmed.

11. In the result, the Civil Miscellaneous Appeal is allowed as follows:-

- (i) The award of the Tribunal is enhanced from 83,304/- to Rs.1,00,000/-
- (ii) The interest granted by the Tribunal at 9% per annum is confirmed.
- (iii) It is made clear that the amount enhanced will carry interest at the rate of 7.5% per annum from the date of the order of the Tribunal till today (24.08.2015).
- (iv) It is also made clear that the appellant will not be entitled to any interest for the delayed period as per order dated 18.3.2015 in M.P.No.2 of 2009 in C.M.A.SR.No.8436 of 2009.
- (v) The claimant is permitted to withdraw the amount already in deposit along with accrued interest, if any.
- (vi) The second respondent is granted eight weeks time to deposit the enhanced compensation along with the interest awarded by this Court.
- (vii) On such deposit being made, the claimant is permitted to withdraw the same.
- (viii) There will be no order as to costs in this appeal.

Sd/-

Assistant Registrar(J)

//True Copy//

Sub Assistant Registrar

sl

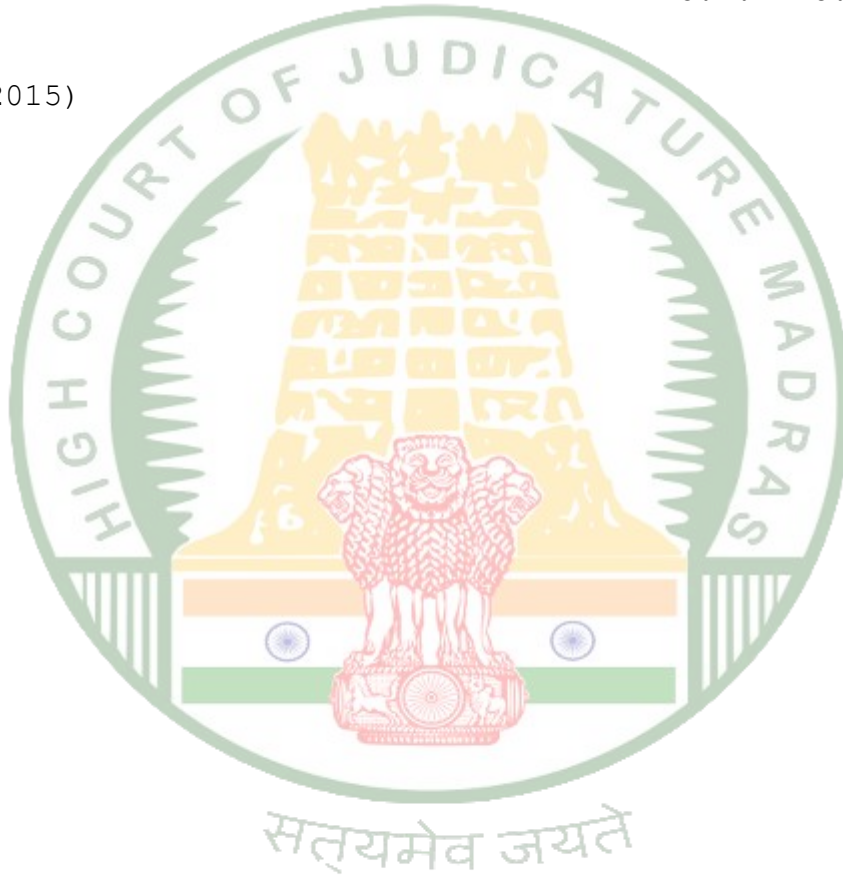
To

The Chief Judicial Magistrate,
(Motor Accidents Claims Tribunal)
Thiruvannamalai.

+1cc to Mrs.M.Malar, Advocate, S.R.No.44892
+1cc to Mr.J.Chandran, Advocate, S.R.No.45628

C.M.A No.743 of 2015

GJ(CO)
CA(20/10/2015)



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